

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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STEVEN MCDERMOTT and  
STACEY MCDERMOTT  
Plaintiffs,

v.

DOCKET NO: 04-CV-12253

FEDEX GROUND PACKAGE SYSTEMS,  
INC., T.S. PRUITT, ALLEGIANCE  
HEALTHCARE, INC., D. PONCE, E.W.  
WYLIE CORPORATION, D.W. SMITH,  
ARSENBERGER TRUCKING, INC., J.T.  
FOSBRINK, RYDER TRUCK RENTAL,  
LORRAINE ODZANA as  
ADMINISTRATRIX OF THE ESTATE OF  
JAMES J. ODZANA, SHORELINE  
TRANSPORTATION, INC., JACLYN  
PALETTA as ADMINISTRATRIX OF  
THE ESTATE OF MARIO J. CASTRO  
Defendants.

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MEMORANDUM OF DEFENDANT, ARSENBERGER TRUCKING, INC., IN  
SUPPORT OF ITS MOTION FOR ENTRY OF SEPARATE AND FINAL JUDGMENT

The defendant, Arsenberger Trucking, Inc. ("Arsenberger"), hereby moves pursuant to Fed. R. Civ. P. 54(b) for entry of separate and final judgment in its favor as to all claims asserted against it.

FACTUAL BACKGROUND

This case involves multiple defendants. The plaintiffs filed a Complaint against FedEx Ground Package Systems and T.S. Pruitt on October 26, 2004. The plaintiffs then filed a Second Amended Complaint on December 22, 2006, adding ten defendants, including Arsenberger. On July 27, 2007, Arsenberger filed a motion to dismiss on the grounds of a lack of personal

jurisdiction. On September 13, 2007, after a full hearing, the court allowed Arsenberger's motion to dismiss.

Pursuant to Rule 54(b), the Court may direct entry of separate and final judgment as to one or more claims or parties upon an express determination that there is no just reason for delay. As there are no pending claims against it, Arsenberger should not be forced to incur the hardship of remaining a party while litigation continues between the remaining parties. Furthermore, there is no just reason for delay and the parties will not be prejudiced by the entry of separate and final judgment.

### ARGUMENT

I. There is no reason for delay and this Court should enter separate and final judgment in favor of Arsenberger Trucking, Inc.

The Federal Rules of Civil Procedure Rule 54(b) regarding judgment upon multiple claims or involving multiple parties states that:

"When more than one claim for relief is presented in an action, whether as a claim, counterclaim, crossclaim, or third party claim, or when multiple parties are involved, the Court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

The plaintiffs' opposition to Arsenberger's motion to dismiss for lack of personal jurisdiction was based solely on the fact that Arsenberger did not assert a specific affirmative defense setting forth the defense of lack of personal jurisdiction. The plaintiffs did not oppose the lack of jurisdiction issue on the merits. The Court was persuaded that Arsenberger's general denial of any jurisdictional claims satisfied the tests set forth by prior courts and found that Arsenberger had acted reasonably and promptly in moving to dismiss and therefore granted the motion.

In the present case, the Plaintiffs do not have a claim against Arsenberger because this court has no jurisdiction over Arsenberger. Further, there is no evidence to suggest that there will be any risk of prejudice from immediate appellate review.

Arsenberger therefore requests that an order of separate and final judgment as to all claims be entered in its favor.

CONCLUSION

WHEREFORE, the defendant, Arsenberger Trucking, Inc., requests that this Court make an express determination that there is no just reason for delay and enter separate and final judgment in Arsenberger's favor, pursuant to Fed. R. Civ. P. 54(b), with respect to all claims against Arsenberger.

Respectfully submitted,

The Defendant,  
ARSENBERGER TRUCKING, INC.,  
By its Attorneys,

/s/Cheryl A. Enright

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CERTIFICATE OF SERVICE

I hereby certify that is document filed through the EFC system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on this 25<sup>th</sup> day of October, 2007.

/s/Cheryl A. Enright

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Cheryl A. Enright, BBO No. 552237